

Unofficial Draft Copy

As of: April 29, 2008 (9:43am)

LC9208

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ALLOWING FOR THE CREATION OF SPECIAL DISTRICTS BY LOCAL GOVERNMENTS WORKING INDIVIDUALLY AND JOINTLY; ESTABLISHING UNIFORM STANDARDS FOR THE CREATION, ADMINISTRATION AND OPERATION OF SPECIAL DISTRICTS BY GOVERNING BODIES AND ELECTED OR APPOINTED BOARDS; ELIMINATING SPECIFIC PROVISIONS RELATING TO CEMETERY DISTRICTS, COUNTY MUSEUMS, FACILITIES FOR THE ARTS, AND MUSEUM DISTRICTS, COUNTY PARKS DISTRICTS, COUNTY WATER AND SEWER DISTRICTS, FAIR COMMISSIONS, FAIR DISTRICTS, AND MULTI COUNTY FAIR DISTRICTS, HOSPITAL DISTRICTS, JOINT SOLID WASTE MANAGEMENT DISTRICTS, LIBRARY DISTRICTS, LOCAL IMPROVEMENT DISTRICTS, LOCAL WATER QUALITY DISTRICTS, METROPOLITAN SANITARY AND STORM SEWER DISTRICTS, MOSQUITO CONTROL DISTRICTS, MULTI JURISDICTIONAL SERVICE DISTRICTS, ROAD IMPROVEMENT DISTRICTS, RODENT CONTROL DISTRICTS, RURAL FIRE DISTRICTS, SOLID WASTE MANAGEMENT DISTRICTS, TELEVISION DISTRICTS, AND URBAN TRANSPORTATION DISTRICTS; AMENDING SECTIONS 7-1-201, 7-1-202, 7-2-4734, 7-3-122, 7-3-1345, 7-4-2711, 7-6-204, 7-6-2512, 7-6-2527, 7-7-2101, 7-11-1102, 7-13-2219, 7-13-2220, 7-13-2511, 7-13-2512, 7-16-2105, 7-16-2109, 7-21-3411, 7-22-2512, 7-33-2403, 7-34-2122, 7-34-2201, 7-34-2417, 10-3-202, 10-3-209, 10-3-902, 10-3-1103, 15-6-201, 20-15-403, 22-1-326, 22-1-701, 40-6-402, 46-18-261, 50-78-102, 53-30-503, 61-8-102, 69-3-101, 69-12-102, 70-30-102, 75-5-106, 75-5-311, 75-5-

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601, 76-3-103, 76-13-104, 7-13-3023, and 85-2-311, MCA; REPEALING
SECTIONS 7-11-1101, 7-11-1102, 7-11-1105, 7-11-1106, 7-11-1107,
7-11-1111, 7-11-1112, 7-13-101, 7-13-102, 7-13-103, 7-13-104, 7-
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7-35-2135, 7-35-2136, 7-35-2137, 7-35-2138, 7-35-2139, 7-35-2140, 7-35-2141, 7-35-2142, 7-35-2143, 7-35-2144, 7-35-2145, 7-35-2146, 7-35-2147, 7-35-2148, 7-35-2149, 7-35-2150, 7-35-2201, 7-35-2202, 7-35-4101, 7-35-4103, 7-35-4105, 7-35-4106, 7-35-4107, 7-35-4108, 7-35-4109, 22-1-702, 22-1-703, 22-1-704, 22-1-705, 22-1-706, 22-1-707, 22-1-708, 22-1-709, 22-1-710, 22-1-711, and 22-1-716, MCA; AND PROVIDING AN EFFECTIVE DATE."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 19] is to allow for the creation and governance of local special purpose districts.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 19], the following definitions apply:

(1) "Governing body" means the legislative authority of a local government.

(2) "Local government" means any city, town, county, consolidated city-county, or any combination of these acting jointly.

(3) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, hospital districts, sewer districts, and transportation districts. The

term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

NEW SECTION. **Section 3. Authorization to create special districts.** (1) Whenever the public convenience and necessity may require:

 (a) the governing body may create a special district to serve the inhabitants of the special district; or

 (b) petitioners may initiate the creation of a special district to serve inhabitants of the special district.

 (2) A petition to institute the creation of a special district must be signed by ____ % of the property taxpayers or registered voters within the boundary of the proposed special district. A defect in the contents of the petition, its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings, as long as the petition has a sufficient number of qualified signatures attached.

NEW SECTION. **Section 4. Determining special district boundaries.** The governing body or petitioners shall consult with the county election administrator to prepare a legal description of the boundaries for the proposed special district. The boundaries must follow precinct, school district, municipal, and county lines as far as practical. The boundary must be mapped and clearly described before the special district may be approved.

NEW SECTION. **Section 5. Public hearing -- resolution of**

intention to create special district. (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body or upon a petition that contains the required number of signatures.

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost of the proposed program or improvements; and

(f) any requirements specifically applicable to the type of special district.

(3) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

NEW SECTION. **Section 6. Right to protest -- procedure -- hearing.** (1) An owner of property liable to be assessed for the

program or improvements in the proposed special district has 30 days from when the passage of the resolution of intention is noticed to the public to make a written protest against the proposed program or improvements.

(2) The protest must be in writing and must be delivered to the appropriate county clerk or city clerk, who shall endorse on the protest the date of receipt.

(3) An owner of property created as a condominium may protest pursuant to the provisions in [section 17].

(4) At the hearing provided for in [section 5], the governing body shall consider all protests.

(a) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(b) If the protest against the proposed program or improvements is made by the owners of more than 50% of the area in the proposed special district, further proceedings may not be taken by the governing body for at least six months.

(c) In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district.

(d) The decision of the governing body is final and conclusive.

(5) The governing body may adjourn the hearing from time to time.

NEW SECTION. **Section 7. Referendum -- election.** (1) The governing body may order a referendum on the creation of the proposed special district to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of [section 5(2)(e), section 11(3), and section 14];

(b) the type of activities proposed to be financed, including a general description of the program or improvements; and

(d) a general description of the areas included in the proposed special district.

(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(4) The proposition to be submitted to the electorate must be: "Shall the proposition to organize (name of proposed special district) be adopted?"

(5) An individual is entitled to vote on the proposition if:

(a) the individual meets all qualifications required of electors under the general election laws of the state; and

(b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

(6) An individual who is the owner of the real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.

(7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).

(8) The election administrator of each county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the clerk and recorder of the county or counties in which the special district is situated a certificate stating that the proposition was adopted.

NEW SECTION. Section 8. Certificate of establishment. (1)

Upon the receipt of the certificate referred to in [section 7(8)], the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk of the county or counties in which the district is situated.

(2) From and after the date of a certificate issued by the

secretary of state, the district named in the certificate must be considered established with all the rights, privileges, and powers set forth in [section 11].

NEW SECTION. **Section 9. Order creating district -- power to implement program.** (1) The governing body may create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with [section 6] or if the eligible registered voters have approved a referendum as provided in [section 7].

(2) To create a special district, the governing body shall pass an order in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum. This must be done within 30 days of the end of the protest period or the referendum.

(3) If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall proceed in accordance with [section 8].

(4) The governing body shall provide a description and map of the boundaries of the approved special district to the departments of revenue and administration, for inclusion in the geographic information system, as defined by 90-1-403, by the following January 1.

NEW SECTION. **Section 10. Limitations on lawsuits.** (1) A finding of the governing body in favor of the genuineness and sufficiency of the petition or election is final and conclusive against all persons except the state of Montana upon suit brought by the attorney general.

(2) A lawsuit filed by the attorney general must be filed within 1 year after the order creating the special district is approved by the governing body.

NEW SECTION. **Section 11. Governance -- powers and duties.** (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated. The separate board may be granted additional powers by the governing body. The governing body has ultimate authority.

(3) The entity chosen to administer the special district, as provided in subsection (1) may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

(b) administer the budget of the special district;

(c) employ personnel;

(d) purchase, rent, or lease equipment, personal property and material necessary to develop and implement an effective program;

(e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;

(f) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, devise, or purchase, land, facilities, buildings and material necessary to implement the purposes of the special district;

(g) construct and maintain facilities and buildings necessary to accomplish the purposes of the special district;

(h) provide grants to private, nonprofit entities as part of implementing an effective program;

(i) borrow money by the issuance of bonds to lease, purchase, and maintain lands, facilities and buildings in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4;

(j) exercise the right of eminent domain pursuant to 70-30-102;

(k) adopt a seal and alter it at its pleasure;

(l) administer local ordinances as appropriate; and

(m) establish district capital improvement funds, pursuant to 7-6-616, and maintenance and debt service funds.

NEW SECTION. **Section 12. Multiple jurisdictions.** (1) A

special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.

(2) A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district or interlocal agreement as necessary.

(3) The local governments shall equally share the ownership of real or personal property acquired by the district.

NEW SECTION. Section 13. Alteration of special districts.

(1) The governing body may, not more than once a year, change by resolution the boundaries of any special district, but the change of boundaries may not affect indebtedness existing at the time of the change.

(2) The boundaries may be altered by petition, pursuant to the requirements of [section 3].

(3) Alteration is also subject to procedures for public notice, protest, referendum, certification, and establishment of

assessment set forth in [sections 4 through 9 and 14].

(4) Changes made to the boundaries may not delete any portion of the area which will create an island of included or excluded lands.

NEW SECTION. **Section 14. Financing for special district.**

(1) The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to [section 11].

(2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefitted by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(3) The governing body shall assess the percentage of the cost of the program or improvements against the entire district as follows:

(a) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;

(c) each lot or parcel of land, including the improvements

on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;

(d) in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the area to be improved or maintained;

(e) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

(f) any combination of the assessment options provided in subsections (3)(a), (3)(c), (3)(d) and (3)(e) may be used for the special district as a whole or for any lot or parcel within the special district.

(4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

NEW SECTION. **Section 15. Notice of resolution for assessment -- assessment.** (1) The governing body shall estimate,

as near as practicable, the cost of each established special district annually by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.

(2) The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements.

(3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

(4) The resolution must be kept on file in the office of the clerk of the governing body.

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection, must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

(6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.

(7) At the time set, the governing body shall meet and hear all objections which may be made to the assessment or any part of the assessment and may adjourn from time to time for that purpose and may by resolution modify the assessment.

(8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue at the same time and in the same manner as other taxes and assessments are provided and to the treasurer or financial officer of the local government.

NEW SECTION. Section 16. Collection of special district

assessments. (1) When a resolution of assessment has been certified by the clerk of the local government, the county treasurer or city treasurer or town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as taxes for general purposes are collected.

(2) All money received by the district must be deposited in an account held only for the special district by the county treasurer's office.

NEW SECTION. Section 17. Payment of assessment under protest -- action to recover. (1) When an assessment made under [sections 1 through 19] is considered unlawful by the party whose property is charged or from whom the payment is demanded, the

person may pay the assessment or any part of the assessment considered unlawful under protest to the county treasurer.

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government in whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer until the determination of an action brought for the recovery of the assessment.

(4) If the assessment considered unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

NEW SECTION. **Section 18. Assessments as liens.** (1) An assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon and against the property upon which the assessment is made and levied from and after the date of the passage of the resolution levying the assessment. This lien can only be extinguished by payment of the assessment, with all penalties, costs, and interest or by sale of the property as provided in subsection (2).

(2) When the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of

the assessment may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

NEW SECTION. Section 19. Dissolution of special district.

(1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government, or because the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or that of the separate board administering the special district.

(3) After the passage of the resolution provided for in subsection (1), the clerk of the local government that established the special district shall publish a notice as provided in 7-1-2121 or 7-1-4127 of the intention to abandon.

(4) The notice must specify the boundaries of the district to be dissolved, the date of the passage of the resolution of intention to dissolve, and the date set for the passage of the resolution of dissolution and that unless 40% of the owners of real property in the district file written protest with the clerk

of the local government before the passage of the resolution, it will be passed.

(5) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

(6) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

(a) deposited in the general fund of the local government;

(b) in the case of multiple local governments, divided according to the percentage of the special district located within each government's jurisdiction and deposited in the general fund of each local government; or

(c) transferred to a new district that has been created to provide substantially the same service as provided by the dissolved district.

(7) If the remaining assets are derived from grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.

Section 20. Section 7-1-201, MCA, is amended to read:

"7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, ~~and this section,~~ and [sections 1 through 19] and listed in 7-1-202. The resolution creating an

administrative board, district, or commission must specify:

- (a) the number of board, district, or commission members;
- (b) the terms of the members;
- (c) whether members are entitled to mileage, per diem, expenses, and salary; and
- (d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

- (i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

- (ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) (a) Administrative boards, districts, and commissions may be made elective.

(b) If an administrative board is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

- (a) the name of the board, district, or commission;
- (b) the date of appointment and confirmation, if any is required;
- (c) the length of term;
- (d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and
- (e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members

shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional

qualifications for membership.

(15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners."

{Internal References to 7-1-201:

7-1-202	7-8-2103*	7-13-213*	7-13-2510
7-13-2521*	7-16-2203*	7-16-2217*	7-16-2301*
7-16-4201	7-21-3401*	7-22-2103*	7-22-2215*
7-22-2411*	7-35-2108*}		

Section 21. Section 7-1-202, MCA, is amended to read:

"7-1-202. Creation of new boards. Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

- (1) county building commission;
- (2) cemetery districts;
- (3) county fair commission;
- (4) hospital district;
- (5) library district;
- ~~(4)~~(6) mosquito control board;
- ~~(5)~~(7) museum board;
- ~~(6)~~(8) board of park commissioners;
- (9) road district;
- ~~(7)~~(10) rodent control board;

- (11) rural fire district;
- ~~(8)~~ (12) solid waste district;
- ~~(9)~~ (13) television district;
- (14) urban transportation district;
- (15) water and sewer district;
- (16) water quality district;
- ~~(10)~~ (17) weed management district."

{ Internal References to 7-1-202:

7-1-201	7-1-201	7-8-2103*	7-13-213*
7-13-2521*	7-16-2203*	7-16-2217*	7-16-2301*
7-21-3401*	7-22-2103*	7-22-2215*	7-22-2411*
7-35-2108*}			

Section 22. Section 7-2-4734, MCA, is amended to read:

"7-2-4734. Standards to be met before annexation can occur.

A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of the attempted annexation, of any fire district organized under any of the provisions of part 21, the former chapter 33, part 21 or [sections 1 through 19] if the fire district was originally

organized at least 10 years prior to the inception of attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation ~~as provided in 7-33-2127~~ in accordance with this section."

{Internal References to 7-2-4734:

7-2-4711	7-2-4712	7-2-4731	7-2-4741
7-2-4742	7-2-4742*		

Section 23. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in ~~Title 7, chapter 34,~~
~~part 21~~ [sections 1 through 19];

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in ~~Title 7, chapter 13, part 22~~ [sections 1 through 19]; or

(i) an urban transportation district as provided in ~~Title 7, chapter 14, part 2~~ [sections 1 through 19].

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

{Internal References to 7-3-122:

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7-3-121* 7-3-122* 7-3-124* 7-3-124*
7-3-154* 7-3-193}

Section 24. Section 7-3-1345, MCA, is amended to read:

"7-3-1345. Fire department. (1) The fire department of the municipality is in the charge of a director, who ~~shall be~~ is the chief ~~thereof~~ of the department and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government ~~shall have~~ has no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of ~~parts 21 and 23 of~~ chapter 33, part 23 of this title or former chapter 33, part 21, of this title.

(b) ~~Nothing in this~~ This part or part 12 ~~shall~~ may not be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of ~~parts 21 and 23 of~~ chapter 33, part 23 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of ~~parts 21 and~~ part 23 of chapter 33. These organizations may enter mutual aid agreements ~~as provided by 7-33-2108.~~"

{Internal References to 7-3-1345:
37-60-101}

Section 25. Section 7-4-2711, MCA, is amended to read:

"7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal. The county attorney shall defend all suits brought against the county.

(2) The county attorney shall:

(a) give, when required and without fee, an opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within the county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee; and

(e) when requested by a county hospital board ~~pursuant to 7-34-2115~~, act as counsel, without fee, unless the legal action requested involves the county commissioners."

{Internal References to 7-4-2711: None.}

Section 26. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest -- exceptions. (1) Interest

paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

- (a) by law;
- (b) by terms of a gift, grant, or donation; or
- (c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, former part 21, or part 23, or [sections 1 through 19], or of a fire service area or county fire department must be credited to the account of that fire district, service area, or department.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment."

{Internal References to 7-6-204:
7-6-2701 7-7-2112}

Section 27. Section 7-6-2512, MCA, is amended to read:

"7-6-2512. County tax levy for health care facilities. (1)
Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or

county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. If a hospital district is created under former Title 7, chapter 34, part 21 or [sections 1 through 19], the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

{Internal References to 7-6-2512:

7-6-2527 7-34-2411 7-34-2411 7-34-2414}

Section 28. Section 7-6-2527, MCA, is amended to read:

"7-6-2527. Taxation -- public and governmental purposes. A county may impose a property tax levy for any public or

governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in ~~7-11-1106~~ [section 12];
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, and 7-16-2109, ~~and 7-21-3410~~;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for ~~a museum, facility for the arts and the humanities, collection of exhibits, or a museum district as provided in 7-16-2205~~ special districts;

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(12) extension work in agriculture and home economics as provided in 7-21-3203;

(13) weed control and management purposes as provided in 7-22-2142;

(14) insect control programs as provided in 7-22-2306;

(15) fire control as provided in 7-33-2209;

(16) ambulance service as provided in 7-34-102;

(17) public health purposes as provided in 50-2-111 and 50-2-114;

(18) public assistance purposes as provided in 53-3-115;

(19) indigent assistance purposes as provided in 53-3-116;

(20) developmental disabilities facilities as provided in 53-20-208;

(21) mental health services as provided in 53-21-1010;

(22) airport purposes as provided in 67-10-402 and 67-11-302;

(23) purebred livestock shows and sales as provided in 81-8-504;

(24) economic development purposes as provided in 90-5-112; and

(25) prevention programs, including programs that reduce substance abuse."

{Internal References to 7-6-2527:
7-1-2103 7-1-4123}

Section 29. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1)

A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402 ~~and 7-21-3413~~, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

{Internal References to 7-7-2101:
7-7-2203 7-7-2402}

Section 30. Section 7-11-1102, MCA, is amended to read:

"7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under ~~Title 7, chapter 16, part 24~~ [sections 1 through 19];

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

- (e) dog control programs;
- (f) ambulance service;
- (g) dispatch service;
- (h) protection of human health and the environment,
including scenic concerns and recreational activities for areas
requiring or involving environmental reclamation;
- (i) health services and health department functions; and
- (j) maintenance or provision of any public infrastructure
facility, project, or service."

{Internal References to 7-11-1102: None.}

Section 31. Section 7-13-2219, MCA, is amended to read:

"7-13-2219. Power to construct works across roads and other obstacles. The board of directors appointed or elected pursuant to [sections 1 through 19] ~~shall have power to~~ may construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of ~~said~~ the works may intersect or cross~~7.~~ ~~provided such~~ The works ~~are~~ must be constructed in ~~such a manner as to afford~~ that provides security for life and property~~7.~~ ~~and said~~ The board shall restore the crossings and intersections to their former state as near as may be practicable or in a manner that does not ~~to have impaired unnecessarily impair~~ their usefulness."

{Internal References to 7-13-2219: None.}

Section 32. Section 7-13-2220, MCA, is amended to read:

"7-13-2220. Right-of-way across state lands. The

right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and ~~the~~ a district formed pursuant to [sections 1 through 19] has the same rights and privileges relating to the right-of-way as are granted to municipalities."

{Internal References to 7-13-2220: None.}

Section 33. Section 7-13-2511, MCA, is amended to read:

"7-13-2511. Prohibition on operation of cable TV systems. A television district organized under the former provision of this part or [sections 1 through 19] may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems."

{Internal References to 7-13-2511: None.}

Section 34. Section 7-13-2512, MCA, is amended to read:

"7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners which initially established the district. The petition, its filing, ~~and~~ its processing, and public hearing are governed by ~~7-13-2503,~~

~~7-13-2504, and 7-13-2505 [sections 5 and 6].~~

~~(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the county commissioners approve the ~~decision is~~ to approve the petition is approved, the resolution ~~shall~~ must authorize the board of trustees of the district to provide the requested services and ~~shall~~ must describe the proposed system, including the type of construction, proposed location, and estimated costs."~~

{Internal References to 7-13-2512:
7-13-2510}

Section 35. Section 7-16-2105, MCA, is amended to read:

"7-16-2105. Acquisition of land by county for public recreational or cultural purposes. ~~(1)~~ A county may acquire, by purchase, grant, deed, gift, devise, condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway.

~~(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203."~~

{Internal References to 7-16-2105:
7-16-2106 70-30-102}

Section 36. Section 7-16-2109, MCA, is amended to read:

"7-16-2109. Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities -- restriction. (1) Subject to 15-10-420 and except as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to ~~both 7-16-2102 and 7-21-3410~~ may combine ~~the two taxes~~ that levy with any fees assessed in accordance with [section 14] into a single ~~tax~~ assessment for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single ~~tax~~ assessment provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single ~~tax~~ assessment, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall ~~levy the tax~~ collect the assessment if the imposition or continued imposition of the single ~~tax~~ assessment is approved by a majority of the

electors voting on the question."

{Internal References to 7-16-2109:
7-6-2527}

Section 37. Section 7-21-3411, MCA, is amended to read:

"7-21-3411. Restriction on use of appropriation or tax money. ~~No portion~~ An amount of the appropriation or tax levy or assessment for a county fair district or a multiple county fair district provided for in 7-21-3410 ~~may not shall~~ be expended for horseracing."

{Internal References to 7-21-3411:
7-21-3406* 7-21-3457*}

Section 38. Section 7-22-2512, MCA, is amended to read:

"7-22-2512. Financing of vertebrate pest management program -- tax. (1) A governing body may:

(a) appropriate from the county general fund an amount to fund vertebrate pest management and transfer it to the county vertebrate pest management fund; and

(b) subject to 15-10-420, levy a vertebrate pest management tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both ~~7-22-2222~~ [section 14] and this section for the control of rodents ~~as defined in 7-22-2207~~. Land within a rodent control district may be taxed under this section only a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management

and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund."

{Internal References to 7-22-2512: None.}

Section 39. Section 7-33-2403, MCA, is amended to read:

"7-33-2403. Operation of fire service area -- voted levy for volunteer firefighters' disability income insurance. (1)

Whenever the board of county commissioners has established a fire service area, the commissioners may:

- (a) govern and manage the affairs of the area;
- (b) appoint five qualified trustees to govern and manage the affairs of the area; or
- (c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for ~~election of rural fire district trustees in~~ 7-33-2106 in [section 11] and Title 7, chapter 1, part 2.

(2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the purpose of buying disability income insurance coverage for volunteer firefighters deployed within the fire service area as provided in 7-6-621.

~~(3) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and 7-33-2106 applies whether the trustees are elected or appointed, except that~~

(3) the The trustees shall prepare annual budgets and

request a schedule of rates for the budget."

{ Internal References to 7-33-2403:
7-33-2404 }

Section 40. Section 7-34-2122, MCA, is amended to read:

"7-34-2122. Powers of district. A hospital district has all powers provided in [sections 1 through 19] ~~necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of hospital facilities that its board of trustees considers necessary and expedient.~~ In addition to the general grant of powers, a hospital district, acting by its board of trustees, may:

~~(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by fees that may be agreed upon;~~

~~—— (2) cause reports, plans, studies, and recommendations to be prepared;~~

~~—— (3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, or otherwise and acquire real or personal property by gift;~~

~~—— (4) lease or construct, equip, furnish, and maintain necessary buildings and grounds;~~

~~—— (5) adopt, by resolution, rules for the operation and administration of hospital facilities under its control and for the admission of persons to the facilities;~~

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~~—— (6) impose by resolution and collect charges for all services and facilities provided and made available by it;~~

~~—— (7) subject to 15-10-420, levy taxes as prescribed in this part;~~

~~—— (8) borrow money by the issuance of its bonds as prescribed in this part;~~

~~—— (9) borrow money by the issuance of notes;~~

~~(10)~~ (1) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property; and

~~(11) sell or lease any of its facilities or equipment as may be considered expedient;~~

~~—— (12) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants; and~~

~~(13)~~ (2) provide educational benefits to qualified individuals, including the payment of tuition, room and board, educational materials, and stipends and the repayment of student loans in return for an agreement by those persons to provide services to the district."

{Internal References to 7-34-2122: None.}

Section 41. Section 7-34-2201, MCA, is amended to read:

"7-34-2201. Erection and management of county health care facilities -- definition -- provision of health care services.

(1) The board of county commissioners has jurisdiction and power,

under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts ~~21 and~~ 23 through 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, a critical access hospital, a hospice, an end-stage renal dialysis facility, an outpatient center for surgical services, an outpatient center for primary care, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as defined in 7-34-2102, or any combination and related medical facilities, including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

{*Internal References to 7-34-2201:*

7-6-2512

7-6-2512

7-34-2401

7-34-2411}

Section 42. Section 7-34-2417, MCA, is amended to read:

"7-34-2417. Health care facility tax levy authorized. If the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may, subject to 15-10-420, levy taxes on the taxable value of all taxable property within the county ~~in the manner provided for public hospital districts under 7-34-2133.~~"

{Internal References to 7-34-2417:

7-34-2411 7-34-2415* 7-34-2415* 7-34-2416*
7-34-2418}

Section 43. Section 10-3-202, MCA, is amended to read:

"10-3-202. Mutual aid -- cooperation. (1) Political subdivisions and governmental fire agencies organized under Title 7, chapter 33~~7~~ or [sections 1 through 19] must be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state or any other state or the United States pursuant to Title 10, chapter 3, part 11, for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of

the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American red cross under its congressional charter."

{*Internal References to 10-3-202:*
10-3-209}

Section 44. Section 10-3-209, MCA, is amended to read:

"10-3-209. Political subdivision requests for assistance -- application to fire districts, fire service areas, and fire companies in unincorporated places -- immunity. (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to former Title 7, chapter 33, part 21 or [sections 1 through

191, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

- (i) a fire district;
- (ii) an unincorporated municipality;
- (iii) an incorporated municipality;
- (iv) a state agency;
- (v) a private fire prevention agency;
- (vi) an agency of the federal government;
- (vii) a fire service area;
- (viii) the governing body of a political subdivision; or
- (ix) the governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to part 11 of this chapter.

(3) A public or private agency receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance or if it will provide other assistance and shall inform the requesting local or interjurisdictional agency, principal executive officer, incident commander, or other individual or entity making the request, as soon as possible, of

that determination. The nature and extent of assistance provided by a public or private agency may be determined only by that public or private agency.

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

- (a) a fire district;
- (b) a fire service area;
- (c) a fire company;
- (d) an unincorporated municipality, town, or village;
- (e) a political subdivision; or
- (f) an agent, employee, representative, or volunteer of an entity listed in this subsection."

{Internal References to 10-3-209:

7-33-2108	7-33-2202	7-33-2208	7-33-2208
7-33-2405	7-33-4112	10-3-902	10-3-902}

Section 45. Section 10-3-902, MCA, is amended to read:

"10-3-902. Policy -- purpose. (1) It is the policy of the state that:

(a) available resources should be made available whenever possible and practical to minimize the negative impacts of disasters and emergencies, regardless of the political jurisdiction in this state within which the disaster or emergency occurs and regardless of the political jurisdictions from which a request for assistance arises or from which or to which the resources are made available;

(b) agreements, either formal or informal, written or oral, between or among political subdivisions of this state, that exist or are entered into for the purpose of providing mutual aid in the event of a disaster or emergency should remain options for political subdivisions and should not be infringed upon or in any way affected by the provisions of this part; and

(c) in particular, the provisions of this part do not affect any mutual aid agreement, either formal or informal, written or oral, that is made or that may be made pursuant to Title 7, chapter 33, [sections 1 through 19], 10-3-209, or 10-3-703 or a request for assistance or aid or assistance or aid provided or received pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703.

(2) It is the purpose of this part to:

(a) establish an effective and efficient mutual aid system in which a political jurisdiction can choose to participate that can operate separate from yet integrated with other freestanding mutual aid systems or agreements;

(b) provide to political jurisdictions in the state another option for establishing mutual aid agreements and for requesting,

providing, and receiving mutual aid; and

(c) allow political jurisdictions maximum flexibility to protect life and property through mutual aid agreements."

{Internal References to 10-3-902: None.}

Section 46. Section 10-3-1103, MCA, is amended to read:

"10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a governmental fire agency organized under Title 7, chapter 33 or [sections 1 through 19], or another fire suppression entity organized under the laws of this state, any other state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United

States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as provided in this part."

{Internal References to 10-3-1103: None.}

Section 47. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories -- exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33 or [sections 1 through 19];

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for

residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

(d) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(e) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized

under Title 35, chapter 2 or 3, is not exempt.

(f) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

(g) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(h) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(i) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(j) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(k) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for

oil, gas, coal, or minerals;

(1) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(m) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(m), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of

the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(b) For the purposes of subsection (1)(g):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for

which the exemption is requested.

(c) For the purposes of subsection (1)(i), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display."

{Internal References to 15-6-201:

41-3-201 61-3-321 61-10-214}

Section 48. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602,

2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,
7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, ~~7-13-110~~, ~~7-13-210~~,
7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605,
15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114,
18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811,
22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107,
39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237,
49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through
82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

{Internal References to 20-15-403: None.}

Section 49. Section 22-1-326, MCA, is amended to read:

"22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under former part 7 of this chapter or [sections 1 through 19]. The purposes of state aid are to:

(a) broaden access to existing information by strengthening

public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329."

{Internal References to 22-1-326:

22-1-325*	22-1-326*	22-1-326*	22-1-326*
22-1-404	22-1-705}		

Section 50. Section 22-1-701, MCA, is amended to read:

"22-1-701. Public library districts ~~--purpose --~~
territory. ~~(1) The purpose of this part is to provide a method~~
~~for:~~

~~—(a) establishing, equipping, administering, and funding~~
~~public libraries; and~~

~~—(b) contracting for library services from existing public~~
~~libraries.~~

~~(2) A public library district may contain the entire~~
~~territory of a county, the territory of part of a county, or~~
~~territory in more than one county. A public library district may~~

~~include incorporated municipalities within a county.~~

~~(3)~~ The territory included in a public library district created in accordance with [sections 1 through 19] must contain a taxable value of at least \$5 million."

{Internal References to 22-1-701: None.}

Section 51. Section 40-6-402, MCA, is amended to read:

"40-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a governmental fire agency organized under Title 7, chapter 33 or [sections 1 through 19].

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury

results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

{ Internal References to 40-6-402:
41-3-102 41-3-102 }

Section 52. Section 46-18-261, MCA, is amended to read:

"46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement agencies, governmental fire agencies organized under Title 7, chapter 33 or [sections 1 through 19], and the state for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of

suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement agency or governmental fire agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action."

{Internal References to 46-18-261: None.}

Section 53. Section 50-78-102, MCA, is amended to read:

"50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals

are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation,

partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means the chief of a governmental fire agency organized under Title 7, chapter 33 or [sections 1 through 19], or the chief's designee.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared

in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under subsection (e)(1)(i) of the OSHA standard or under this chapter."

{Internal References to 50-78-102: None.}

Section 54. Section 53-30-503, MCA, is amended to read:

"53-30-503. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means an entity organized and existing

pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.

(2) "Department" means the department of corrections.

(3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(4) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(5) "Multijurisdictional service district" means a district established in accordance with ~~Title 7, chapter 11, part 11~~ [sections 1 through 19].

(6) "Regional correctional facility" means a facility for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department."

{Internal References to 53-30-503: None.}

Section 55. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation -- definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires

otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33 or [sections 1 through 19], an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings,

railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles

that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(8)(b).

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is

between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

{ Internal References to 61-8-102:

15-6-219	33-23-204	45-5-205	61-1-101
61-1-101	61-1-101	61-8-380	61-8-605
61-9-102	61-9-102	61-9-102	61-9-103
61-9-402	61-9-406	61-9-415	61-10-123
61-12-101	61-12-101}		

Section 56. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, ~~shall embrace~~ includes every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court ~~whatsoever~~, that ~~now or hereafter~~ may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

- (b) street-railway service;
 - (c) light;
 - (d) power in any form or by any agency;
 - (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, ~~and villages~~ or elsewhere;
 - (f) regulated telecommunications service.
- (2) The term "public utility" does not include:
- (a) privately owned and operated water, sewer, or combination systems that do not serve the public;
 - (b) county or consolidated city and county water or sewer districts as ~~defined in~~ allowed by Title 7, chapter 13, parts 22 and 23 [sections 1 through 19]; or
 - (c) a person exempted from regulation as a public utility as provided in 69-3-111."

{Internal References to 69-3-101:

15-72-104	69-3-111	69-3-111	69-3-202
69-3-1203	76-3-103}		

Section 57. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter -- exemptions. (1) This chapter does not affect:

- (a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;
- (b) the transportation by means of motor vehicles in the

regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, or town, ~~or village~~ with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, or town, ~~or village~~ with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district ~~as provided in~~ in accordance with Title 7, chapter 14, part 2 [sections 1 through 19];

(ii) a municipal bus service pursuant to Title 7, chapter

14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection, "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

{Internal References to 69-12-102: None.}

Section 58. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

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(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes ~~as provided in~~ pursuant to 7-35-2201 [section 11], cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

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(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and

storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

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{Internal References to 70-30-102:

7-5-4106	7-15-4206	15-7-202	70-30-103
70-30-111	77-2-101}		

Section 59. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement

authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of ~~Title 7,~~ ~~chapter 13, part 45~~ [sections 1 through 19], to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a

location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

{Internal References to 75-5-106: None.}

Section 60. Section 75-5-311, MCA, is amended to read:

"75-5-311. Local water quality districts -- board approval -- local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in ~~Title 7, chapter 13, part 45~~ [sections 1 through 19], shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of

pollution:

- (a) onsite wastewater disposal facilities;
- (b) storm water runoff from paved surfaces;
- (c) service connections between buildings and publicly owned sewer mains;
- (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

- (e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

- (i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

- (ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

- (iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local

ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

(9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.

(10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water

quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

{*Internal References to 75-5-311:*
7-13-4513 7-13-4518}

Section 61. Section 75-5-601, MCA, is amended to read:

"75-5-601. Cleanup orders. (1) The department may issue an order to a person to clean up any material that the person or the person's employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute state waters.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by ~~7-13-2204 and 7-13-2208 through 7-13-2214~~ [sections 1 through 19]."

{Internal References to 75-5-601:
75-5-311* 75-5-617}

Section 62. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in

regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in ~~Title 7, chapter 13, parts 22 and 23~~ [sections 1 through 19].

(14) "Subdivider" means a person who causes land to be

subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of

land under subsection (16) (b) (i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

{Internal References to 76-3-103:

69-5-102

76-4-127

76-6-203

76-7-203}

Section 63. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department -- rulemaking. (1) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33 or [sections 1 through 19], from any

fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) ~~By October 1, 2008, the~~ The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

{Internal References to 76-13-104:
76-13-116}

Section 64. Section 7-13-3023, MCA, is amended to read:

"7-13-3023. Hearing on protest. (1) The time for the hearing on protest must be not less than 5 days after the final publication of the notice ~~required by 7-13-126.~~

(2) The notice must be signed by the county clerk and state that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, as provided in 7-1-2121.

~~(2)~~ (3) At the time fixed for the hearing, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage."

{Internal References to 7-13-3023: None.}

Section 65. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or

state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator

will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth

in subsection (1)(g), only the department of environmental quality or a local water quality district established under former Title 7, chapter 13, part 45 or [sections 1 through 19], may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the

importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an

unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section."

{Internal References to 85-2-311:

85-2-102*	85-2-141	85-2-308	85-2-312
85-2-313	85-2-317	85-2-322	85-2-323
85-2-360	85-2-363	85-2-363	85-2-363
85-2-363	85-2-708	85-2-708	85-20-1301
85-20-1401}			

NEW SECTION. **Section 66. {standard} Repealer.** Sections 7-11-1101, 7-11-1102, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-11-1112, 7-13-101, 7-13-102, 7-13-103, 7-13-104, 7-13-105, 7-13-106, 7-13-107, 7-13-108, 7-13-109, 7-13-110, 7-13-111, 7-13-112, 7-13-113, 7-13-114, 7-13-115, 7-13-121, 7-13-122, 7-13-123, 7-13-124, 7-13-125, 7-13-126, 7-13-127, 7-13-128, 7-13-141, 7-13-142, 7-13-143, 7-13-144, 7-13-145, 7-13-146, 7-13-151, 7-13-152, 7-13-153, 7-13-154, 7-13-155, 7-13-156, 7-13-201, 7-13-202, 7-13-

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22-1-702, 22-1-703, 22-1-704, 22-1-705, 22-1-706, 22-1-707, 22-1-
708, 22-1-709, 22-1-710, 22-1-711, and 22-1-716, MCA, are
repealed.

{Internal References to 7-11-1101: None.}

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Internal References to 7-11-1102: None.
Internal References to 7-11-1105: None.
Internal References to 7-11-1106: 7-6-2527 7-11-1112
Internal References to 7-11-1107: None.
Internal References to 7-11-1111: None.
Internal References to 7-11-1112: None.
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Internal References to 7-13-212:	7-13-217	7-13-303
Internal References to 7-13-213:	7-13-202	
Internal References to 7-13-215:	None.	
Internal References to 7-13-216:	None.	
Internal References to 7-13-217:	None.	
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Internal References to 7-13-231:	7-13-307*	
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Internal References to 7-13-311:	None.	
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Internal References to 7-13-2203:	None.	
Internal References to 7-13-2204:	7-13-2205	75-5-601
Internal References to 7-13-2205:	None.	
Internal References to 7-13-2206:	7-13-2208	
Internal References to 7-13-2207:	None.	
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Internal References to 7-35-2146:	7-35-2131*	7-35-2135*	7-35-2142*
7-35-2142* 7-35-2149*			
Internal References to 7-35-2147:	7-35-2131*	7-35-2135*	7-35-2142*

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7-35-2142* 7-35-2149*
Internal References to 7-35-2148: 7-35-2131* 7-35-2135* 7-35-2142*
7-35-2142* 7-35-2149*
Internal References to 7-35-2149: 7-35-2131* 7-35-2135* 7-35-2142*
7-35-2142* 7-35-2149*
Internal References to 7-35-2150: 7-35-2131 7-35-2135 7-35-2142
7-35-2142 7-35-2149
Internal References to 7-35-2201: 7-35-2202 7-35-2202 70-30-102
Internal References to 7-35-2202: None.
Internal References to 7-35-4101: None.
Internal References to 7-35-4103: None.
Internal References to 7-35-4105: None.
Internal References to 7-35-4106: None.
Internal References to 7-35-4107: None.
Internal References to 7-35-4108: None.
Internal References to 7-35-4109: None.
Internal References to 22-1-702: None.
Internal References to 22-1-703: 22-1-708
Internal References to 22-1-704: None.
Internal References to 22-1-705: None.
Internal References to 22-1-706: 22-1-705
Internal References to 22-1-707: None.
Internal References to 22-1-708: 22-1-707
Internal References to 22-1-709: 22-1-708
Internal References to 22-1-710: None.
Internal References to 22-1-711: None.
Internal References to 22-1-716: 22-1-707}

NEW SECTION. Section 67. {standard} Codification

instruction. [Sections 1 through 19] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 19].

NEW SECTION. Section 68. {standard} Saving clause.

[Sections 1 through 19] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2009.

NEW SECTION. Section 69. {standard} Effective date. [This act] is effective July 1, 2009.

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{Name : Hope Stockwell
Title : Research Analyst
Agency : LSD
Phone : 444-1640
E-Mail : hstockwell@mt.gov}